



**Comments of the Kingdom of the Netherlands on the Draft Political Declaration on
Strengthening the Protection of Civilians from Humanitarian Harm arising from the use of
Explosive Weapons in Populated Areas**

30 April 2020

The Netherlands presents its compliments to Ireland for its leadership and dedication to enhance the protection of civilians in warfare. The Netherlands commends Ireland for the text “Draft Political Declaration on Strengthening the Protection of Civilians from Humanitarian Harm arising from the use of Explosive Weapons in Populated Areas”, (circulated 17 March 2020) and takes this opportunity to share its observations and suggestions in writing.

General observations

By means of introduction to our comments and suggestions for the draft political declaration later in this document, the Netherlands wishes to share some general observations on the process, the broader purpose, objectives and framework of a political declaration to enhance the protection of civilians in urban warfare.

While there is broad agreement among participants about the need to enhance the protection of civilians in warfare, divergent views continue to exist on the causes of the unacceptable harm to civilians in urban warfare, and thus upon the goal and objectives of the political declaration.

The Netherlands is of the view that existing International Humanitarian Law (IHL) provides the necessary framework to protect civilians during warfare in all contexts. Its rules and principles should be fully adhered to by all parties to a conflict. Regrettably, a significant number of actors do not respect, or even willingly violate, IHL, i.e. by directly targeting civilians, using force excessively, disproportionately and/or indiscriminately, and/or the use of human shields.

Therefore, the Netherlands is of the view that the political declaration should first and foremost address the implementation-deficit of existing IHL. Existing IHL provides clear guidance and restrictions on the means and methods of warfare that may be employed, and serves to limit the humanitarian consequences of warfare – including from the use of explosive weapons with wide area effects in densely populated areas. The absence of agreement on key definitions such as “explosive weapons”, “wide area effects” and “populated areas” make any additional international commitments in this context ambiguous. Moreover, the Netherlands is especially concerned by the obfuscations or reinterpretations of existing IHL in the current text of the political declaration, which runs the risk of the risk of undermining the existing legal framework.

In conclusion, the Netherlands is of the view that a more clear and concise political declaration that provides a strong and unambiguous political commitment to strengthen the implementation of, and respect for existing IHL offers in our view the best way forward. Including through agreeing on a number of practical measures that seek to enhance the respect for, and implementation of IHL.

Comments and suggestions

Section 1

- 1.1 The Netherlands notes that there is a lack of accurate data on the number of civilian casualties, hence the call for better data collection in this political declaration. In light of this, the Netherlands suggests to delete the reference to “increasing” number of civilian casualties. As noted in our general observations, the absence of agreement on key definitions such as “explosive weapons”, “wide area effects” and “populated areas” remain a concern for the Netherlands. By adding the word “densely” to “populated areas”, which is intended to be used in combination with those terms (i.e. “wide area effects” and “explosive weapons”), more clarity is provided in light of a (realistic) scope of application of this Declaration in line with IHL.

~~As contemporary In conflicts become more protracted, complex and urbanised, the proportion of civilians should be protected against the effects of armed violence casualties is increasing. As contemporary armed conflicts become more protracted, complex and urbanised The causes involve a range of factors, including the use of explosive weapons with wide area effects in densely populated areas, and poses complex challenges for the protection of civilians in line with International Humanitarian Law.~~

- 1.2 The Netherlands suggest to use the term “essential urban services”, which is more in line with existing IHL. Moreover, the psychological and psychosocial harm to civilians is not only limited to urban settings, therefore, we suggest to delete the reference to *urban warfare*.

~~Explosive weapons with wide area effects can have a devastating impact on civilians and civilian objects in particular in densely populated areas. The blast and fragmentation effects can cause immediate deaths and injuries to civilians. Beyond these direct impacts, civilian populations can be exposed to severe and long-lasting reverberating effects, as when they are deprived of- These occur in particular essential services such as health care, when critical civilian infrastructure is damaged or destroyed, such as hospitals, energy networks, and water and sanitation systems. The destruction of housing, schools, and cultural heritage sites, as well as the damage to the environment further aggravates civilian suffering. Urban warfare It This can also result in psychological and psychosocial harm to civilians.~~

- 1.3 This paragraph builds on 1.2 and therefore a shorter introduction is suggested. Moreover, in in IHL the term “urban armed conflict” does not exist, therefore we suggest to delete the reference to *urban armed conflict*.

~~Thise effects can have a negative impact on progress towards the Sustainable Development Goals and can result in the displacement of people within and across borders. Following urban armed conflict, eExplosive remnants of war can impede the return of displaced persons and cause casualties long after hostilities have ended.~~

- 1.4 In view of the Netherlands, the two examples provided in this paragraph are both violations of existing IHL, which should be clear from the text. In addition, the Netherlands requests the replacement of the word *armed groups* with *actors*, which encompasses a broader range of actors than organized armed groups alone.

~~Tactics designed to exploit the proximity of civilians and civilian objects to military objectives in populated areas, as well as the use of improvised explosive devices directed against civilian and civilian objects, and other violations of International Humanitarian Law, including by non-State armed groupsactors, all exacerbate these challenges and are of grave concern.~~

- 1.5 Explosive weapons with wide area effects are not by definition difficult to direct, which is mostly dependent on their means of delivery. Therefore, the Netherlands requests to strike out the reference to 'directing'.

The inherent difficulty in ~~directing and~~ limiting the effects of explosive weapons with wide area effects in densely populated areas to specific military objectives located in populated areas can increase the likelihood of civilian harm. While many militaries implement good operational policies and practices designed to protect civilians, there is scope for practical improvements in the universal implementation of, and compliance with, International Humanitarian Law, and in such good practices. Broadening and strengthening initiatives designed to share military policies and good practices on protecting civilians can support the promotion and better implementation of International Humanitarian Law.

- 1.6 In line with our comments under 4.2, a commitment to data collection must be realistic, implementable, and must have a clear goal. Therefore, the Netherlands suggests a shorter more concise wording.

We recognise the importance of efforts ~~efforts to record civilian casualties, and the use of all practical measures to ensure appropriate of of~~ data collection, ~~including, where possible, data disaggregated by sex and age~~. The collection of data ~~on civilian casualties~~ can also inform policies designed to mitigate civilian harm, aid efforts to investigate harm to civilians, establish accountability and enhance lessons learnt processes in armed forces

Section 2

- 2.2 For consistency reasons the Netherlands suggest to amend this paragraphs as follows:

Existing International Humanitarian Law provides the framework to regulate the conduct of armed conflicts, and is applicable to the use of explosive weapons with wide area effects in all operating environments, and to all parties to an armed conflict. We stress the importance of full compliance with International Humanitarian Law as a means to protect civilians and civilian objects and mitigate ~~civilian humanitarian consequences~~ harm.

- 2.3 The Netherlands is of the view that the obligation to adhere to IHL falls on all parties to an armed conflict irrespective of the context, hence we suggest the deletion of the reference to States and conducting hostilities in populated areas, as well as combatants. More importantly, the Netherlands recommends to use the original terminology of the basic principles of IHL to avoid obfuscations or reinterpretations of existing IHL.

We recall the obligations on all ~~States and~~ parties to armed conflict to adhere to International Humanitarian Law ~~when conducting hostilities in populated areas, including the principles of distinction, requirements to distinguish between combatants and civilians as well as between military objectives and civilian objects; the proportionality, and prohibitions against indiscriminate and disproportionate attacks and the obligation to take all feasible precautions in attack~~. We also recall the obligation under International Humanitarian Law to provide civilians with general protection against dangers arising from military operations.

Part B: Operative Section

Section 3

3.3 In the view of the Netherlands, the suggested language selectively reinterprets existing IHL, which runs the risk of undermining the existing legal framework. In particular, the absence of agreement on the key definitions “explosive weapons”, “wide area effects” and “populated areas” used in the declaration, makes the suggested commitment ambiguous. Therefore, the Netherlands suggests replacing this language with an unambiguous commitment to IHL.

Ensure that our armed forces adopt and implement policies and practices to avoid ~~civilian harm~~ humanitarian consequences by complying with International Humanitarian Law restricting the use of explosive weapons with wide area effects in populated areas whose effects extend beyond the immediate area of a military objective.

3.4 The Netherlands is of the view that reverberating effects must be taken into consideration in line with existing IHL. In the absence of a clear understanding of what is meant by the adjectives *direct* and *indirect* effects, the Netherlands would be in favour of deleting adjectives *direct* and *indirect*. In line with Additional Protocol I to the Geneva Conventions, mitigation measures need to be feasible.

Ensure that our armed forces make every effort in the planning and conduct of military operations ~~and the execution of attacks in populated areas~~ to consider ~~direct, indirect and~~ reverberating effects on civilians and ~~essential civilian objects~~ urban services, which can reasonably be foreseen, and take appropriate and feasible mitigation measures to limit the risk of harm to civilians and civilian objects.

Section 4

4.1 The Netherlands is not in a position to support the establishment of a new forum at this stage.

Strengthen international cooperation and assistance among armed forces with respect to exchanges of technical information and tactical doctrine in order to develop a community of good practice to enhance the protection of civilians. ~~As a starting point, a working group of interested parties could agree a toolbox of good practice, which could form the basis for structured military to military exchanges, workshops, and seminars.~~

4.2 A commitment to data collection must be realistic and implementable and it remains the prerogative of States to decide if they share their data. In line with our comments under 3.4, in the absence of a clear understanding what is meant by the adjectives *direct* and *indirect* impact, the Netherlands would be in favour of deleting adjectives *direct* and *indirect*.

Where feasible, collect and share ~~and, where appropriate, share disaggregated~~ data, on the ~~direct and indirect~~ impact on civilians of our military operations involving the use of explosive weapons in urban areas.

- 4.3 Whereas the UN and the ICRC already have mandate for data collection, this political declaration is not the appropriate place to provide new mandates. Hence, the Netherlands asks for the deletion of the ‘other organizations.

Support the United Nations ~~and~~ the ICRC ~~and other organisations capturing to collect~~ data on the impact of military operations involving the use of explosive weapons in ~~urban populated~~ areas, as appropriate, to complement and support the role of States in this area.

- 4.5 Non-state actors play an increasing role in conflicts and can form an impediment for the provision and unimpeded access for humanitarian relief efforts, this should be recognized by the political declaration.

~~Urge all parties to armed conflict to Provide provide~~ and facilitate rapid and unimpeded access for humanitarian relief to all persons in need.

- 4.6 For consistency reasons, added reference to densely populated areas.

Support the United Nations, the ICRC, other international organisations and relevant civil society organisations in actions aimed at protecting and assisting civilian populations and addressing the direct and indirect humanitarian impact of the use of explosive weapons with wide area effects in densely populated areas.

- 4.8 The Netherlands is not in position to commit itself to a periodic review process at this stage.

~~Meet periodically to r~~Review the implementation of this declaration and identify any relevant additional measures that may need to be taken to improve compliance with existing International Humanitarian Law and to strengthen the protection of civilians and civilian objects with regard to the use of explosive weapons with wide area effects in densely populated areas.

- 4.9 IHL must be implemented by all actors not only States, therefore a broad distribution and implementation must be encouraged.

Actively promote this declaration, distribute it to all relevant stakeholders and seek adherence to it by the greatest possible number of States and other relevant actors.